

**WORK SESSION
OF THE BRIGHAM CITY COUNCIL
TO DISCUSS FORMATION OF SPECIAL ASSESSMENT AREA (SAA)
REVIEW COMMITTEE AND CITY'S PARTICIPATION IN
UTAH INFRASTRUCTURE AGENCY FUNDING
OCTOBER 7, 2010
6:00 P.M.**

PRESENT:	Dennis Fife	Mayor
	Bruce Christensen	Councilmember
	Scott Ericson	Councilmember
	Ruth Jensen	Councilmember
	Bob Marabella	Councilmember
	Tyler Vincent	Councilmember
ALSO PRESENT:	Dave Burnett	Director of Public Power
	Mary Kate Christensen	City Recorder
	Bruce Leonard	City Administrator
	Kirk Morgan	City Attorney
	Jason Roberts	Finance Director

Fiber Optic Review Panel

Mayor Fife explained that his intent is to form a panel of citizens to listen to citizens that previously signed up for UTOPIA but for some reason want to now cancel their contract and not receive the services. He has asked former Mayor LouAnn Christensen, Jaye Poelman and Fred Randall to be on the panel. He would also like two councilmembers to serve on the panel. It was recommended Councilmember Christensen and Councilmember Jensen serve on the panel. This will be voted on during the regular City Council meeting.

Mr. Morgan reviewed recommended guidelines for the panel. Those appearing before the panel will be those that have signed up for the SAA but have not been hooked up yet. Cases in which fiber optic lines have been connected will not be reviewed and any disputes should be directed to their service provider.

The panel will meet with the complainants and determine the reason for their dispute. Some examples might be:

1. Was there a fraudulent signature on the contract?
2. Did the contract have the property landowner's signatures?
3. Was there some form of coercion or harassment from the Brigham City agent (UTOPIA salesperson) in obtaining the signatures?
4. Did the complainant fail to read the contract?
5. Was the complainant competent to understand the nature of the agreement?

After the panel has met with the complainant, reviewed the information provided and carried out any further necessary inquiry into the matter, the panel will make findings and recommendations to the City Council. The best option is to trade the connections with another individual or business. Another option is that the City will pay it off and resell it to another person. It can be sold to another person with a contract without a lien on their property. With either option, the lien must be paid off before it can be transferred to someone else.

The first meeting was set for October 12, 2010 at 3:00 p.m. The panel will have a discussion for a half hour before they meet with anyone. Appointments will start at 3:30 with appointments every 15 minutes. Each complainant will be limited to ten minutes and the panel will discuss each particular situation for five minutes.

Utah Infrastructure Association (UIA)

Invoices

Mr. Leonard explained that the City received two invoices after joining the UIA, one for July, August and September and another for October. One was for the dues and the other for the working capital assessment. Once the bonds are issued, 70% will be reimbursed to the cities. After the bonds are issued there will no longer be a working capital assessment. All cities that have joined UIA, except Brigham City, have paid these assessments. The dues will continue, as with any association. Councilmember Christensen expressed

concern with the association fee. He felt it was too high and needs to be resolved. It was unclear what the dues are used for. The Council instructed Mr. Leonard to contact UTOPIA and clarify what the dues are being used for and how they arrived at the amount.

The UIA Board recognized that Brigham City has already spent a lot of money funding the SAA bond. Mr. Leonard, Mayor Fife and Mr. Roberts have met with Kurt Sedweeks of UTOPIA and gone over numbers and have come up with a recommended percentage to participate in the bond. Mr. Roberts explained that the estimated cost of sales tax bond construction is \$185,000,000. Brigham City's pro-rata share (3.34%) would be \$6,179,000. The amount that would have gone into Brigham City after the SAA was \$12.5 million. This shows that they put in \$320,000 more than what would have been 3.34% in Brigham City. This \$320,000 equates to approximately a .52% participation in the next round of bonding. He added that the City may have some exposure to the 150 people that have not connected yet. This number is unknown. There will also be some exposure for delinquent collection on the SAA. These are running higher than normal for an SAA.

The \$320,000 is on a \$62 million bond. The first bond would be issued a \$20 million bond and then they will incrementally issue bonds thereafter over the next five years. The Mayor added that the model shows that after five years UTOPIA will be at the point where they can start paying back some of the other pledges. Mayor Fife added that UTOPIA is going to do the entire bond, but only draw on it a year at a time. Councilmember Christensen said the bonding costs would be substantively higher this way. He questioned whether this can be done. Mayor Fife said it needs to be clarified whether the City is committing to the full \$60 million or the first draw.

When they took this to the UIA Board, they said they realized that Brigham City has almost everyone hooked up and some of the cities do not have anything hooked up and they have the operating loss because they do not have the volume of customers to pay off the operating loss. Brigham City is 17% of their customers and the Board felt that the City should pay 17% of the net operating losses over the next few years. If they project to do a \$62 million bond, approximately \$10 million of that would be for operations and lawsuit. They project over the next five years Brigham City would be a weighted average of 5.45% of their total customers. 5.45% of \$10 million of operating costs is \$575,000. If the City participated at this amount, it would be .93%

Councilmember Christensen said it is interesting that they are looking at how Brigham City represents the total expenditures and not at the gross income coming in. They are not losing 100% of their expenses with the City. They should count the income as well. Mr. Roberts stated that this was brought up several times.

RUS Litigation

Mr. Leonard reported that UTOPIA has asked for a one-time assessment of \$9,987.18 to move forward with a lawsuit against the RUS for breach of the loan agreement. They have spent approximately \$180,000 to date. UTOPIA feels that if they can get RUS in court they have a good chance of winning.

Councilmember Christensen explained that once a loan agreement has been signed and loan agreements are met, the lender has a tremendous liability if funds are not dispersed. They would not only have the liability of what is not dispersed, but also the liability of damages. However, did UTOPIA meet the loan agreement? Mr. Morgan said UTOPIA's latest defense is that they did not receive a request for the second loan payment. Councilmember Jensen said when UTOPIA came to the Council, Dave Shaw said RUS saw red flags. She asked him what the red flags were, and he said he did not remember. Councilmember Christensen understood the concerns to be that the model would not work. They should have that well documented because once a lender agrees to loan funds, they have a significant liability.

Councilmember Jensen stated that when she heard the RUS saw the red flags, she thought, finally, the federal government is doing something right by not lending the citizens' money out to something they had issues with. She did not want to fight the federal government for something they saw that was wrong.

Mr. Leonard said the federal government makes mistakes, and if they made an error on a citizen and that person felt they had been treated unjustly and felt they had the right to reclaim their loses, they would go after them. Councilmember Jensen said the City is not really going to reclaim anything; the City *might* get back the \$9,000. Councilmember Ericson said that is his concern. If there was a settlement with RUS, would any of the money come back to Brigham City or would it go to other places? If it goes to other places, how does that

benefit Brigham City? Councilmember Christensen added that Brigham City was one of the prime reasons why they got an RUS loan. Councilmember Ericson stated that these concerns need to be answered before a decision can be made. Mr. Leonard said if the Council agrees to pay the \$9,000 the City will get it back, maybe not in disbursement, but if it helps the other cities it helps Brigham City pay off the sales tax bond. Mr. Morgan explained that the \$9,000 will come back with the bond, whether they win or not.

Communications Utility

Mr. Leonard explained that the City needs to create a communications utility. The attorney is reviewing a draft ordinance to do that. This will allow the City to manage the revenue and bring new customers on.

Mr. Roberts explained that if the City goes with the concept used in the UIA, citizens would have an assessment on their utility bill, instead of creating an SAA and having a lien on their property. The UIA bonds would pay for the cost to install the hookup. Mayor Fife said Brigham City is unique because the UIA bond is to cover the entire construction and Brigham City has already done some of the construction. It would still be \$3,000 and Brigham City would be reimbursed 60% of that amount.

Councilmember Marabella asked how the communication utility compares to storm drain utility, for example. Mr. Leonard explained that they have discussed creating the utility so the City can manage the money. There would not be a fee until there is a better understanding of how the fees will be created. At that time a resolution will be presented for approval with the fee rate structure. If there is new growth and new construction, the City can work with the developer to get the fiber optic utility to the development.

Due to time constraints, the Council will discuss these issues further in a future work session or Council meeting.

The meeting adjourned at 7:00 p.m.